IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No 285 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE J.R.VORA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

AJITBHAI RAMJIBHAI PARMAR

Versus

LILABEN MAISURBHAI ZALA

Appearance:

1. Criminal Revision Application No. 285 of 2001

MR AB MUNSHI for Petitioner No. 1

MRS JYOTSNA K PATEL for Respondent No. 1

MR BY MANKAD PUBLIC PROSECUTOR for Respondent No. 2

CORAM : MR.JUSTICE J.R.VORA

Date of decision: 06/10/2001

ORAL JUDGEMENT

#. This Criminal Revision Application has been filed by the husband - opponent of Misc.Criminal Application No.4954/2000 filed before the Family Court No.2 by wife

respondent No.1 herein under Section 125 of the Criminal Procedure Code, being aggrieved by the order of learned Family Court Judge on 16.3.2001 below final order granting interim maintenance to wife, the present respondent No.1 herein, who had filed Misc.Criminal Application No.4954/2000 against the present petitioner before the Family Court under Section 125 of the Criminal Procedure code.

#. The brief facts reveal that the present Respondent No.1 - Lilaben Maisurbhai Zala married to present petitioner on 1.5.1996. After sometime, there were disturbances in marital life and as per the allegations of the wife, she was driven away from the house of the husband and at present she has sought resort to her parental home and hence an application came to be filed by wife Lilaben for maintenance under Section 125 of the Criminal Procedure Code.

#. Wife also filed an affidavit which was controverted by the present petitioner vide affidavit - Ex.8. The husband - opponent - present petitioner herein took the defence that he has been sick since long due to heavy diabetes and he has become weak so he could not do anything. He has denied to take the wife at home because he cannot afford to give peace and happiness to wife. From this affidavit, the learned Family Court Judge came to the conclusion that the applicant wife was able to prove that she was driven away without any reasonable cause by the husband and the maintaining wife and children is the legal duty of the husband. The learned Family Court Judge observed that the husband has neither produced sufficient evidence on record nor has asked for the cross-examination of the applicant to absolve from the duty of paying the maintenance to wife and hence after considering the income of the husband the learned Family Court Judge directed the husband to pay the amount of Rs.500/- p.m. from the date of the application to the wife and to pay Rs.300/- to the applicant towards the cost of the application. This order dated 16.3.2001 is impugned in this Revision by the husband.

#. Learned advocate Mr.Munshi, on behalf of the applicant -husband was heard. He contended that the husband was not given proper opportunity to adduce evidence and for the cross-examination of the applicant. It was contended that the present petitioner - husband is heavily diabetic. My attention was drawn to the medical report right from page No.17 to 37 which denotes that the present petitioner is heavily diabetic and suffering from low hemoglobin. It was urged that due to this, the present petitioner is not able to do any work so as to

maintain his wife - respondent No.1. It was urged that these documents were tendered in the Family Court but the Family Court Judge failed to consider these documents and came to a wrong conclusion. Learned advocate Mr.Munshi urged that the order of the Family Court therefore is required to be set aside. Learned advocate Ms.Joshnaben Patel, for the respondent No.1 - wife urged that the diabetes is not the disease which would prevent the husband from doing any work for the earning and the order passed is correct one. Learned APP Mr.B.Y.Mankad, for the respondent No.1 - State was heard.

#. Having considered rival contention and perusing the record available, it clearly appears that the applicant has filed an affidavit in the Family Court. It is nowhere disclosed from the record that the husband was prevented from cross-examination of the applicant and, therefore, it cannot be said that the husband petitioner was not given a proper opportunity to adduce evidence. On the contrary, the husband has filed affidavit at Ex.8 in which he has taken defence of he being very sick due to heavy diabetes. In the affidavit he has disclosed his inability to perform marital duties. The learned Judge from the above has come to the conclusion that the wife was driven away by the husband to her parental home without any reasonable cause. It was urged on behalf of the wife in the Family Court that the husband was earning Rs.5,000/- p.m. because he was contractor of plumbing. The husband also in his reply Ex.3 admitted that he was earning Rs.80/- per day and from this evidence the learned Family Court Judge passed an order to pay the maintenance of Rs.500/- p.m. to the wife from the date of the application. It is the duty of the husband to maintain his wife. It cannot be said that the contentions urged on behalf of the husband have not been taken into consideration by the Family Court. Merely having diabetes would not absolve the husband of his responsibility to maintain his wife. This is the law of this land. It cannot be said that because husband is suffering from diabetes, he has no sufficient means to maintain his wife and, therefore, it cannot be said that the documents which are produced herein, are not taken into consideration by the Family Court Judge. On the contrary, the Family Court Judge has observed that even if husband renounces the world, he cannot escape from maintaining his wife, because the duty to maintain wife is not only moral but is legal as well. In these circumstances, merely because the husband is suffering from heavy diabetes, it cannot be said that he is not having sufficient means to maintain his wife or not able to do any work. The husband cannot absolve himself from

the duty to maintain his wife on this ground. In this view of the matter, no interference at all is required in the order passed by the Family court on 16.3.2001 which is impugned in this Revision.

#. In the result, this Revision application fails and dismissed. Rule is discharged.

(J.R. VORA, J.)

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